IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.26038 of 2007

1. **ALI IMAM, SON OF SHAH MOHAMMAD ANSARI.**
2. **UMDA ANSARI @ ALI HASAN ANSARI, SON OF SHAH MOHAMMAD ANSARI.**
3. **KAIRU NESHA @ KHAIRUN, DAUGHTER OF SHAH MOHAMMAD ANSARI.**
4. **ABIDA KHATOON, WIFE OF SHAH MOHAMMAD ANSARI.**
5. **SHAH MOHAMMAD, SON OF LATE RASOOL MIAN.**
   ALL ARE RESIDENT OF VILLAGE-JASMAR POLICE STATION-UCHAKAGAON, DISTRICT- GOPALGANJ.
   AT PRESENT ALL ARE RESIDENT OF MOHALLA-HAR CHANDPUR KANAURA(BIJAYKHERA), POLICE STATION-ALAM BAGH, DISTRICT-LUCKNOW)(UTTAR PRADESH).
   ……PETITIONERS.

Versus

1. **THE STATE OF BIHAR.**
2. **MAHBOOB MIAN, S/O LATE KURBAN MIAN, VILLAGE-JALALI TOLA, P.O. SAKHEKHAS, P.S. UCHKAGAON, DISTRICT-GOPALGANJ.**
   ……OPPOSITE PARTIES.

For the Petitioners : Mr. Irshad Ahmad Khan, Advocate.
For the State : Mr. Jharkhandi Upadhayay, A.P.P.
For O.P. No.2 : None.

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4. 7.11.2008. Heard the learned counsel for the petitioners as also the learned A.P.P. for the State.

The grievance of the petitioners is against the order dated 22.1.2005 passed by Sri S.P. Shukla, the learned Judicial Magistrate, First Class, Gopalganj, in Complaint Case No.1973 of 2004,whereby he has taken cognizance under Sections 323/379 I.P.C. against the petitioners.

The defence of the petitioners is that prior to the filing of the instant complaint, petitioner no.5 had filed a complaint petition before

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the Women Police Station, Hazratganj, Sadar, Lucknow(Annexure-3), whereby he had alleged the commission of offences under Sections 498-A, 323, 504, 506 I.P.C. against the complainant of the instant case and others and that the instant case is by way of an after thought and a counter blast.

Apparently, the submissions advanced by the learned counsel for the petitioners happen to be their defence and under the ambit of jurisdiction under Section 482 Cr.P.C. the defence or alibi of the accused cannot be looked into or decided thereunder.

Accordingly, while giving liberty to the petitioners to raise all these issues at the time of framing of charge, I am constrained to dismiss the application as being without merit.

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It appears from perusal of the records that cognizance was taken as far back as on 22.1.2005 and till 10.9.2007 when a Bench of this Court stayed the further proceedings in the court below, no steps appear to have been taken by the court below to proceed with the case and no step after taking cognizance has been taken. It is hereby directed that the learned court below will take into account this matter as an urgent and dispose of the same as expeditiously as possible, preferably within a period of one year from the date of receipt of a copy of this order.

(Abhijit Sinha,J)

P.S.